


Below is an order of the court.

Below is the Court's Report and Recommendation



PETER C. MCKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:

PETER SZANTO,

Debtor.

PETER SZANTO,

Plaintiff,

v.

EVYE SZANTO, VICTOR SZANTO, NICOLE
SZANTO, KIMBERLEY SZANTO, MARIETTE
SZANTO, ANTHONY SZANTO, AUSTIN
BELL, JOHN BARLOW, and BARBARA
SZANTO ALEXANDER,

Defendants.

Bankruptcy Case
No. 16-33185-pcm7

Adv. Proc. No. 16-3114-pcm

MEMORANDUM OPINION

REPORT AND RECOMMENDATION

This adversary proceeding is just the latest in a long history of litigation between Peter Szanto ("Peter")¹ and members of his family,

¹ Because several of the parties share a last name, for clarity in this opinion the court will refer to the parties by their first names. No disrespect is intended. All defendants, other than John Barlow, will be collectively referred to as "defendants."

1 originally stemming from a dispute about Peter's deceased parents'
2 family trust. Over the years, Peter's claims against the family have
3 escalated from a probate matter challenging the amendment of the family
4 trust documents to remove Peter as co-trustee and beneficiary, to claims
5 of identity theft, fraud, conspiracy, and physical abuse of Peter's
6 parents, among others. It is this court's intent that the decision in
7 this adversary proceeding will finally resolve the issues between Peter
8 and the other family members and stem the flow of litigation that has
9 occupied Peter, defendants, and multiple courts for years.

10 PROCEDURAL BACKGROUND

11 Peter filed his Chapter 11 case in July 2016, his third bankruptcy
12 case since 2013.² According to Peter, his primary purpose for filing
13 his 2016 Chapter 11 petition in Oregon was to challenge and restructure
14 the two mortgages on his multi-million dollar residence in Newport
15 Beach, California.

16 A month after the Oregon Chapter 11 case was filed, Peter filed
17 this adversary proceeding against members of his family and John Barlow.
18 The complaint alleged numerous claims for relief, based on Peter's
19 belief that he was improperly removed as a trustee and beneficiary of
20 his deceased parents' family trust. He alleged that his siblings and
21 their spouses and children conspired to use mental and physical abuse to
22 force Peter's parents to alter their estate plan to eliminate Peter as a
23 beneficiary. In addition, he alleged that defendants conspired to steal
24 his identity and participated in financial transactions in his name.

25
26 ² Peter filed Bankruptcy Case No. 8:13-bk-11148-CB in the Central
District of California, and then Bankruptcy Case No. BK-N-13-52161-BTB
in the District of Nevada.

1 Doc. 34.

2 Defendants asserted three counterclaims against Peter: (1) attorney
3 fees; (2) wrongful use of civil proceedings; and (3) injunction and
4 vexatious litigant designation. Doc. 66.

5 The court granted summary judgment to defendants on all of Peter's
6 claims and entered a final judgment pursuant to Fed. R. Civ. P. 54(b),
7 made applicable to this proceeding by Fed. R. Bankr. P. 7054. Doc. 369,
8 370.

9 More than three years after this adversary proceeding was filed,
10 the court held a trial on the counterclaims³ that lasted three days.
11 The court took the matter under advisement. The following are the
12 court's findings and conclusions, pursuant to Fed. R. Bankr. P. 7052 and
13 Fed. R. Civ. P. 52(a).

14 FACTUAL BACKGROUND

15 Paul and Klara Szanto were the parents of Peter, Victor, Anthony,
16 and Barbara. Evye is Victor's wife; Mariette is Anthony's wife.
17 Kimberley and Nicole are Peter's nieces, the adult daughters of Victor
18 and Evye. Austin Bell is Kimberley's husband. John Barlow is not a
19 family member, but provided evidence against Peter in a previous case
20 involving the family.

21 Paul and Klara had a family trust. At some time before they both

22 ³ The trial was on the counterclaims for wrongful use of civil
23 proceedings and injunction/vexatious litigant designation. The first
24 claim for relief, attorney fees, is not a separate claim for relief.
25 Further, the "claim" for attorney fees simply asked for reciprocity,
26 seeking attorney fees on dismissal of Peter's claims if Peter's claims
against them entitled the prevailing party to recover attorney fees. A
request for attorney fees in an adversary proceeding, other than as a
sanction, must be made by motion as provided in LBR 9021-1 and Fed. R.
Bankr. P. 7054(b).

1 died in the mid-2000s, they amended the trust documents to remove Peter
2 as a co-trustee and beneficiary from the trust. Peter concluded, based
3 on a telephone conversation that he had with his mother before she died,
4 that defendants were depriving her of food, water and medical treatment,
5 and were providing Klara with mind-altering drugs, all in an attempt to
6 get her to change the trust and remove Peter from the estate plan.
7 Peter says that, in this telephone conversation, his mother complained
8 that she was very, very hungry and very, very thirsty. She did not
9 answer his question about her dialysis, and sounded stressed. From this
10 information, Peter decided that his family members, who were helping to
11 care for Klara, were abusing her for their own gain.

12 After his mother died, Peter started bringing actions against the
13 family members, including against his father before his father died,
14 claiming that the amendment to the trust to remove him as co-trustee and
15 beneficiary was invalid, and that all of the trust assets actually
16 belonged to him. This is based on his allegation that, when he was a
17 young person in the 1960s, he received an award of \$250,000 for false
18 imprisonment in California. Doc. 34, ¶¶ 23-30. Peter's theory is that
19 his parents' fortune, acquired over the next 40 years, all derived from
20 that \$250,000, which they were holding in trust for him, and therefore
21 all of their assets at their death belonged to him.⁴ Any of those
22 assets that were distributed to the other family members were, then,
23 actually Peter's property and should be returned to him.

25 ⁴ Peter has at other times claimed instead that property Paul and
26 Klara transferred during their lifetimes should be brought back into the
family trust and distributed among him and his siblings as
beneficiaries.

1 Peter also concluded that, sometime after their parents' death, the
2 other family members had taken his identification papers that he says he
3 had left in their parents' house, and used those papers to steal his
4 identity and incur credit card and tax debt in his name. He bases this
5 conclusion on his assertion that there was some credit card debt and tax
6 liability incurred in his name that he did not incur, that his family
7 members had access to the parents' house where the identification papers
8 were kept and a motive to harm Peter because of their animosity toward
9 him, and that his two brothers look like him and so could easily obtain
10 benefits in Peter's name.

11 Over more than the past decade, despite having sued his family
12 members numerous times on various theories, Peter has never provided any
13 credible evidence to support any of his claims.

14 Defendants' claim for wrongful use of civil proceedings is based on
15 ten lawsuits Peter filed against family members or related entities over
16 the last 14 years ("the Prior Lawsuits"). In addition, defendants rely
17 on the filing of this adversary proceeding in support of their request
18 for an injunction and designation of Peter as a vexatious litigant.
19 Facts relating to the Prior Lawsuits will follow in the discussion of
20 the claim for wrongful use of civil proceedings.

21 PRELIMINARY MATTERS

22 1. Demand for jury trial

23 At the commencement of the trial, Peter demanded a jury trial. The
24 court denied the request for a jury trial for the reasons set out on the
25 record at the beginning of the second day of trial.

26 ////

1 2. Request for default judgment against John Barlow

2 Also at the commencement of the trial, Peter asked the court to
3 enter a default judgment against defendant John Barlow.

4 On August 14, 2017, the court entered an order dismissing John
5 Barlow, who is deceased, from this adversary proceeding. Doc. 192. He
6 has not been a party to this action since 2017, and there is no basis
7 for entering a default judgment against him.

8 3. Dismissal of claims by Mariette

9 Defendant Mariette did not participate in the trial of these
10 counterclaims, and there was no evidence submitted on her behalf.
11 Therefore, she failed to carry her burden of proof on her claims.
12 Mariette's claims against Peter will be dismissed.

13 4. Defendants' request for punitive damages

14 During closing argument at the trial, defendants for the first time
15 requested an award of punitive damages. Defendants did not plead a
16 request for punitive damages in their answer to Peter's First Amended
17 Complaint and Counter-Claims. See Doc. 66.

18 Although wrongful use of civil proceedings is a state law claim,
19 the Federal Rules of Civil Procedure govern the requirements for seeking
20 punitive damages. Punitive damages, which are a form of special
21 damages, must be specifically pled. Fed. R. Bankr. P. 7009; Fed. R.
22 Civ. P. 9(g); Pruett v. Erickson Air-Crane Co., 183 F.R.D. 248, 250-51
23 (D. Or. 1998).

24 Because defendants failed to plead a request for punitive damages,
25 they are not entitled to such relief. Therefore, the untimely request
26 for punitive damages, made at trial, is denied.

1 5. Defenses asserted by Peter

2 a. Constitutional right to redress grievances

3 Peter generally denied the allegations of defendants'
4 counterclaims, and alleged as an affirmative defense that he has a
5 constitutional right to seek redress of his grievances against
6 defendants. Doc. 96.

7 Peter cites no authority, and the court found none, in support of
8 the proposition that a party is constitutionally entitled to bring
9 duplicitous or meritless lawsuits. The court rejects this claimed
10 defense.

11 b. Statute of limitations

12 During trial, Peter argued that defendants' claims are barred by
13 the statute of limitations.

14 The statute of limitations is an affirmative defense that must be
15 pled in a party's answer. Fed. R. Bankr. P. 7008; Fed. R. Civ. P.
16 8(c)(1).

17 "In general, a party waives any affirmative defense, such as a
18 statute of limitations, not raised in its first responsive
19 pleading. This general rule, however, is subject to exceptions.
20 In the Ninth Circuit, for example, a party may raise an affirmative
defense after an initial pleading if the other party is not
prejudiced."

21 United States v. Colasanti, 282 F.Supp.3d 1213, 1216-17 (D. Or. 2017)
22 (citing Rivera v. Anaya, 726 F.2d 564, 566 (9th Cir. 1984)).

23 Peter failed to raise the statute of limitations argument until after
24 defendants had rested their case. Allowing him to raise the defense at
25 such a late date, after failing to raise it in his responsive pleading,
26 would severely prejudice defendants. Therefore, he failed to properly

1 raise the statute of limitation defense and waived it.

2 6. Credibility

3 The testimony of Peter and of defendants was often diametrically
4 opposed. As a general proposition, the court finds the testimony of
5 defendants to be credible and truthful. The court finds much of the
6 testimony of Peter to be incredible and not truthful. The findings
7 below are based on that determination of credibility or lack thereof.

8 FACTS

9 Defendants' claims are based on Peter's malicious and improper
10 misuse of the civil legal system. The evidence established the
11 following facts with regard to each of the ten lawsuits on which
12 defendants rely for their claims.

13 1. 2006 Nevada Case (Szanto v. Szanto, Case No. 2:06-cv-00048-PMP-PAL
14 (D. Nev.))

15 In 2006, Peter filed a complaint against his deceased mother,
16 Klara, Klara's estate, his father Paul, and his parents' family trust.
17 Exh. K. The court dismissed the action for lack of subject matter
18 jurisdiction. Id.

19 2. 2008 Minnesota Case (Szanto v. Target et al., Case No. 27-CV-08-
20 5779 (Hennepin Cnty. Minn. Dist. Ct.))

21 In 2008, Peter sued Victor, Evye, and entities owned by Victor and
22 Evye, among others, in Minnesota state court for damages allegedly
23 caused by tainted eyedrops Peter claims he was given by Victor, who is
24 an ophthalmologist. Exh. L.

25 Peter testified that he sued Evye, who is a neurologist, because
26 she shares an office building with Victor, so he assumed they worked

1 together. He sued the business entities because he felt that they were
2 alter egos of Victor and Evye, based solely on the fact that the
3 entities were owned by Victor and Evye.

4 The claims against Victor were dismissed with prejudice for lack of
5 personal jurisdiction. Exh. M. Although it is not entirely clear what
6 happened to the claims against Evye, the claims against her were also
7 dismissed. Exh. 1006 at p.4 (Minnesota Court of Appeals stating that
8 the trial court "dismissed claims against all defendants except Target
9 and Altaire based on a variety of defenses, including lack of personal
10 jurisdiction, failure to state a claim on which relief can be granted,
11 and improper service.").

12 Peter claims that this case is still alive, based on the decision
13 of the state court of appeals that partially reversed the trial court's
14 order. He claims that this reversal effectively began the entire
15 litigation anew, so Victor and Evye remain parties to that case.

16 Peter is wrong. The appellate court affirmed the dismissal of the
17 claims for lack of personal jurisdiction. Exh. 1006. The only point on
18 which it reversed was the trial court's denial of Peter's request to be
19 allowed to proceed in forma pauperis. Id. Considering the trial
20 court's order and the appellate court's decision, this court concludes
21 that the claims against Victor and Evye have been dismissed, and Victor
22 and Evye have not been reinstated as parties.

23 3. 2005 Phillip v. Peter Case (Szanto v. Szanto, Case No. 05 CC 08539
24 (D. Nev.))

25 In 2005, Peter's son Phillip filed an action against Peter for
26 recovery of bar mitzvah gifts that he alleged Peter had taken. A few

1 years later, Peter added Victor, Anthony, Barbara, and entities owned by
2 Victor and Evye as cross-defendants, seeking indemnification for any
3 liability Peter might have to Phillip. Exh. N.

4 Peter testified that his purpose in filing these cross-claims
5 against defendants was to bolster his position in an upcoming settlement
6 conference with Phillip. He testified that he wanted to show Phillip
7 that he was serious about moving forward, and was using the cross-claims
8 as a bargaining chip in the settlement conference. Peter never served
9 the cross-complaint on the cross-defendants. After the settlement
10 conference, Peter voluntarily dismissed the cross-claims. Exh. O. The
11 evidence establishes that Peter dismissed the claims because they no
12 longer served as a bargaining chip in the case with Phillip.

13 4. 2011 MM1 Case (Szanto v. Marina Marketplace 1 et al., 11-cv-00394
14 (D. Nev.))

15 In 2011, Peter filed an action in federal district court in Nevada
16 against entities owned by Victor, Evye, and Nicole. Exh. T, U. Victor
17 and Evye were added as individual defendants in the second amended
18 complaint. Exh. V. The second amended complaint asserted that Victor
19 and Evye's entities used funds fraudulently obtained from Paul and Klara
20 to purchase real property in Nevada, and sought damages, injunctive
21 relief, constructive trust, and punitive damages.

22 Three years after the case was filed, the trial court dismissed the
23 action with prejudice for failure to adequately serve defendants,
24 including Victor and Evye, concluding that Peter had provided falsified
25 service documents. Austin Bell and John Barlow provided evidence in
26 this case that they were with Victor in Nevada when Peter claimed Victor

1 had been served elsewhere. Exh. W, X.

2 5. 2011 Jackson County Case (Szanto v. Szanto et al., Case No.
3 112716E2 (Cir. Ct. Jackson Cnty.))

4 On the same date he filed the 2011 MM1 Case, Peter also filed a
5 lawsuit in Jackson County, Oregon against Victor, Evye, and the Victor
6 and Evye Szanto Revocable Trust. Exh. R. This complaint sought
7 injunctive relief, constructive trust, and punitive damages. Id.

8 Peter insists that, despite the fact that his name appears as
9 plaintiff, he did not file this complaint, but instead claims that
10 defendants filed the complaint in Peter's name against themselves.
11 Peter provided no evidence to support this contention, other than his
12 own testimony, which is not credible on this point.

13 The drafting style, font style, and signature are very similar, if
14 not identical, to the distinctive style used in Peter's numerous other
15 filings entered into evidence in this case. The timing of the filing
16 also belies Peter's claim that he did not file this action. He filed
17 the 2011 Jackson County Case on the same day he filed his complaint in
18 the 2011 MM1 Case. The allegations and theories in the two cases are
19 very similar. In the 2011 Jackson County case, Peter alleged that
20 Victor and Evye used funds fraudulently obtained from Paul and Klara to
21 purchase real property in Jackson County, Oregon. In the 2011 MM1 Case,
22 he claimed that Victor and Evye's entities used fraudulently obtained
23 funds from Paul and Klara to purchase real property in Nevada. The
24 complaints seek similar relief. Peter's assertion that, on the same day
25 he admittedly filed a complaint against them in Nevada, Victor and Evye
26 filed an action against themselves in Jackson County that is very

1 similar in form and substance to the Nevada complaint, is simply not
2 credible.

3 I conclude that Peter filed the 2011 Jackson County Case.

4 The Jackson County court entered a General Judgment of Dismissal on
5 in February 2012, for lack of prosecution. Exh. S. Peter moved to set
6 aside the dismissal. Exh. 1012. In March 2012, the court entered an
7 order requiring Peter to serve Victor and Evye with its order and the
8 motion to set aside within 28 days, after which the court would set a
9 hearing. Exh. 1013. The order giving Peter 28 days to properly serve
10 Victor and Evye is the final entry on the docket for the case. Exh.
11 1012.

12 Peter claims that this case remains ongoing. Victor testified that
13 he was never served with the trial court's March 2012 order, or any
14 documents related to the case, and learned of this litigation only after
15 retaining counsel to defend him in this adversary proceeding.

16 The evidence shows that the case has been dismissed against all
17 defendants and has been closed.

18 6. 2012 Oregon District Court Case (Szanto v. Szanto et al., Case No.
19 12-cv-0050-PA (D. Or.))

20 In 2012, Peter removed to Oregon District Court an action that he
21 had filed in Los Angeles County, California against Victor, Anthony, and
22 Barbara, among others, alleging eleven causes of action for, among other
23 claims, malicious prosecution, conspiracy, intentional infliction of
24 emotional distress, and identity theft. Exh. CCC at Exh. B. Peter
25 testified that he removed the action to Oregon District Court because he
26 had discovered that some trust assets were being used improperly to buy

1 real estate in Medford, Oregon.

2 It is unclear what happened to this case. Peter stated in his
3 answers to interrogatories that the case was dismissed by the Los
4 Angeles County court (presumably after remand) because he was unable to
5 provide a bond. Exh. HH at p.9.

6 7. 2013 California Bankruptcy Adversary Proceeding (Szanto v. Szanto
7 et al., Adv. No. 13-ap-1167-B (Bankr. C.D. Cal.))

8 In 2013, after Peter bankruptcy in California, he filed an
9 adversary proceeding in the California bankruptcy court, seeking damages
10 from Victor and Anthony for fraud, fraudulent conveyance, and fraudulent
11 concealment. Exh. Y. Peter never served the complaint on Victor or
12 Anthony. When the main bankruptcy case was dismissed, the bankruptcy
13 court dismissed the adversary proceeding. Exh. Z.

14 8. 2013 Nevada Bankruptcy Adversary Proceeding (Szanto v. Szanto et
15 al., Adv. No. 13-5038-gwz (Bankr. D. Nev.))

16 Also in 2013, Peter filed an adversary proceeding against Victor
17 and Anthony in Nevada bankruptcy court, where he had filed a second
18 bankruptcy petition. Exh. AA. He alleged claims similar to those
19 alleged in the 2013 California Bankruptcy Adversary Proceeding.

20 The court entered defaults against the defendants. They then
21 sought dismissal, saying that they had not been properly served. The
22 court dismissed the action without prejudice to refile, based on its
23 determination that the complaint failed to state a claim for relief.
24 Exh. BB. Peter never sought to refile the complaint.

25 9. 2015 Persolve Case (Szanto v. Persolve et al., Case No. 15-cv-241-
26 AG-DFM (C.D. Cal.))

1 In 2015, Peter filed an action against Victor and Anthony, among
2 others, in the Central District of California, alleging identity theft,
3 fraud, fraudulent transfer, and intentional infliction of emotional
4 distress. Exh. CC.

5 The court entered a default against Anthony. Exh. DD. After
6 Anthony filed a motion to set aside the default, the court entered an
7 order to show cause why the case should not be dismissed for lack of
8 subject matter jurisdiction. Id. In its order setting aside the
9 default and dismissing the case, the court found that, although Peter
10 had "improperly and inefficiently filed four documents totaling 132
11 pages . . . the Court . . . received nothing persuasive regarding its
12 exercise of subject matter jurisdiction." Id. at p.3. It dismissed the
13 case with prejudice for lack of subject matter jurisdiction. Id. at
14 p.8.

15 10. 2016 Oregon Bankruptcy Adversary Proceeding (Szanto v. Szanto, Adv.
16 No. 16-3114-pcm (Bankr. D. Or.))⁵

17 Shortly after Peter filed his Chapter 11 case in this court, he
18 commenced this adversary proceeding against all of the named defendants.
19 He included numerous claims, including, among others, identity theft,
20 conspiracy, fraud, and breach of fiduciary duty. Defendants
21 counterclaimed for wrongful use of civil proceedings and requested that
22 Peter be declared a vexatious litigant.

23 The court granted summary judgment to defendants on all of Peter's

24 ⁵ Although defendants do not rely on this adversary proceeding to
25 support their claim for wrongful use of civil proceedings, the court
26 will discuss it briefly, as it pertains to the claim for
injunction/vexatious litigant designation, and completes the picture of
the litigation among these parties.

1 claims, based on failure to provide evidence to support the claims or
2 statute of limitations. Peter has appealed the summary judgment order.
3 The appeal is pending.

4 11. 2017 Susan Domestic Violence Case (Susan Szanto v. Victor Szanto,
5 Case No. 17V001202 (Super. Ct. Cal. Orange Cnty.))

6 In 2017, a domestic violence case was filed against Victor in
7 Orange County, California, purportedly by Peter's wife, Susan. Exh. KK.
8 It sought a restraining order in favor of Susan against Victor.
9 Evidence presented at the trial in this adversary proceeding shows that,
10 despite the form of the complaint, the complaint was in fact written and
11 filed by Peter. Pursuant to FRE 901(b), the court finds that key
12 distinctive characteristics of the handwriting on the temporary
13 restraining order form, Exh. KK, are the same as on other authenticated
14 samples of Peter's handwriting, such as the handwritten pleading filed
15 in the 2005 Phillip v. Peter Case, Exh. N. Therefore, the court
16 concludes that this complaint against Victor was, in reality, filed by
17 Peter.

18 The case was dismissed without prejudice to refile after Susan
19 failed to appear for the hearing on the restraining order. Exh. LL.

20 CLAIM FOR WRONGFUL USE OF CIVIL PROCEEDINGS

21 1. Preliminary Matters

22 Defendants conceded that they are not seeking damages for wrongful
23 use of civil proceedings based on the filing of this adversary
24 proceeding. Nevertheless, the court wants to make clear that Peter's
25 filing of this lawsuit does not provide a basis for a wrongful use of
26 civil proceedings claim in this case. Under Oregon law, a separate

1 action for wrongful use of civil proceedings must be filed, rather than
2 asserting such a claim in the lawsuit on which the claim is based. ORS
3 31.230(3). Therefore, in this action, defendants cannot recover any
4 damages resulting from this adversary proceeding against them, despite
5 the fact that the claims were adjudicated in their favor on summary
6 judgment.

7 Second, defendants acknowledged at trial that three defendants,
8 Austin, Kimberley, and Nicole, were never named as defendants in the
9 Prior Lawsuits. Therefore, there is no basis for a claim of damages for
10 wrongful use of civil proceedings for any of those defendants. The
11 counterclaims of Austin, Kimberley, and Nicole for wrongful use of civil
12 proceedings will be dismissed. For purposes of the discussion of this
13 claim, all references to "defendants" should be read to exclude Austin,
14 Kimberley, and Nicole.

15 2. Legal Standard

16 "Under Oregon law, the elements of a claim for wrongful initiation
17 of a civil proceeding are (1) commencement and prosecution by the
18 defendant of a judicial proceeding against the plaintiff; (2)
19 termination of the proceeding in the plaintiff's favor; (3) absence
20 of probable cause to prosecute the action; (4) existence of malice;
21 and (5) damages."

22 SPS of Or., Inc. v. GDH, LLC, 258 Or. App. 210, 218 (2013).⁶

23 a. Commencement and prosecution by Peter of a judicial proceeding

24 ⁶ No party argues that California law applies to this claim. In any
25 event, as explained in the Memorandum Opinion on Summary Judgment, Doc.
26 368, the elements of this claim are very similar in Oregon and
California.

In addition, because this is a counterclaim, the posture of the
parties is flipped, so that the "plaintiff" in this claim is actually
defendants, and the "defendant" in this claim is Peter.

1 against the defendants

2 "[A] claim for wrongful initiation of civil proceedings, like a
3 claim for malicious prosecution, can be based on a theory of active
4 participation in a proceeding and is not limited to direct initiation or
5 prosecution of a civil proceeding." Checkley v. Boyd, 170 Or. App. 721,
6 736 (2000). "[A]n active participant is one who sets the machinery of
7 the law in motion, whether he acts in his own name or in that of a third
8 person, or whether the proceedings are brought to enforce a claim of his
9 own or that of a third person." Id. at 737 (internal citations
10 omitted).

11 There is no dispute that Peter either initiated each of the
12 following actions or brought cross-claims in them:

13 2006 Nevada Case
14 2008 Minnesota Case
15 2005 Phillip v. Peter Case
16 2011 MM1 Case
17 2012 Oregon District Court Case
2013 California Bankruptcy Adversary Proceeding
2013 Nevada Bankruptcy Adversary Proceeding
2015 Persolve Case

18 As for the 2011 Jackson County case, Peter denies that he filed
19 this complaint, instead alleging that defendants filed it in his name
20 against themselves. As explained above, based on the testimony and
21 documentary evidence, the court concludes that Peter in fact filed the
22 complaint in Jackson County.

23 As for the 2017 Susan Domestic Violence Case, the court concludes
24 that this case also was filed by Peter, for the reasons explained above.

25 Therefore, the court finds that all of the Prior Lawsuits alleged
26 to have been filed by Peter were in fact filed by him.

1 This element also requires that the judicial proceeding was brought
2 against defendants. See Clausen v. Carstens, 83 Or. App. 112, 116
3 (1986). Claims against a third party, even if they affect or generate a
4 cost to a plaintiff (here - defendants), do not satisfy this
5 requirement. Id. If a claim is not prosecuted against the claimant,
6 such claim cannot be prosecuted maliciously against such claimant. Id.

7 None of the defendants was a party to the 2006 Nevada Case.
8 Although Victor testified that he assisted his father with the
9 litigation, Victor was not a defendant in the case. Therefore, this
10 case cannot support a claim for wrongful use of civil proceedings.

11 Peter named Victor, Evye, Anthony, and Barbara as defendants or
12 cross-defendants in one or more of the remaining Prior Lawsuits.
13 Therefore, all of the remaining Prior Lawsuits were against some or all
14 defendants.

15 b. Termination of the proceeding in the claimant's favor

16 An action is terminated in the favor of the person against whom it
17 was brought by

18 "(1) the favorable adjudication of the claim by a competent
19 tribunal, or (2) the withdrawal of the proceedings by the person
20 bringing them, or (3) the dismissal of the proceedings because of
his failure to prosecute them."

21 Portland Trailer & Equip. v. A-1 Freeman Moving & Storage, 182 Or. App.
22 347, 356-57 (2002) (quoting Restatement (Second) of Torts § 674, comment
23 j (1977)).

24 "[T]he voluntary dismissal of an underlying action before a trial
25 on the merits is favorable to the defendant if it reflects
adversely on the merits of the underlying action. That
26 determination does not necessarily depend on whether the dismissal
was with, or without, prejudice. Instead, it requires an
examination of the circumstances resulting in the termination."

1 Id. at 356.

2 "If the action was voluntarily terminated by the plaintiff, a
3 finder of fact might determine that the termination was an
4 admission that the claim lacked merit. However, the abandonment
5 also might reflect financial impecunity or a determination that the
6 potential recovery did not justify the cost of litigation."

6 Id. at 357.

7 (i) 2008 Minnesota Case

8 As explained above, in 2008, the Minnesota court dismissed the
9 claims against Victor and Evye for lack of personal jurisdiction,
10 failure to state a claim on which relief can be granted, and improper
11 service. This is a termination in favor of Victor and Evye.

12 (ii) 2005 Phillip v. Peter Case

13 Peter voluntarily dismissed his cross-claims against Victor,
14 Anthony, and Barbara after he settled with Phillip. Peter admitted that
15 he filed the claims against defendants to obtain bargaining power in his
16 attempts to settle with Phillip. This is an admission that the claims
17 lacked merit, and constitutes a termination in favor of Victor, Anthony,
18 and Barbara.

19 (iii) 2011 MM1 Case

20 The trial court dismissed Peter's claims against Victor and Evye
21 for failure to serve them, after Peter had provided the court with
22 falsified service documents. This is a termination for failure to
23 prosecute, constituting termination in favor of Victor and Evye.

24 (iv) 2011 Jackson County Case

25 The evidence about the status of this case is unclear. There is an
26 order of dismissal, an order vacating that dismissal and giving Peter

1 time to serve the order vacating dismissal, and no further indication of
2 the status of the case. Defendants have failed to establish that this
3 action was terminated in their favor.

4 (v) 2012 Oregon District Court Case

5 It is unclear what happened to this case. Defendants did not
6 provide any evidence that it was terminated in their favor. Peter
7 testified that the case was dismissed when he failed to provide a bond.
8 This dismissal does not reflect on the merits of the underlying action.
9 Defendants have not established that this action was terminated in their
10 favor.

11 (vi) 2013 California Bankruptcy Adversary Proceeding

12 This complaint was dismissed before it was served on Victor and
13 Anthony, because the main bankruptcy case had been dismissed.

14 A bankruptcy court's dismissal of an adversary proceeding following
15 dismissal of the underlying bankruptcy case does not necessarily reflect
16 negatively on the merits of the adversary proceeding itself. In
17 considering whether to keep an adversary proceeding open when the
18 underlying bankruptcy case is dismissed, the court must consider
19 judicial economy, convenience, fairness and comity. In re Carraher, 971
20 F.2d 327, 328 (9th Cir. 1992). The mere fact that this adversary
21 proceeding was dismissed when the main bankruptcy case was closed is
22 insufficient to show that the litigation was resolved in defendants'
23 favor.

24 (vii) 2013 Nevada Bankruptcy Adversary Proceeding

25 The bankruptcy court dismissed this adversary proceeding for
26 failure to state a claim, concluding that Peter's complaint failed to

1 meet even minimal pleading standards under the federal civil procedure
2 rules. It did not address defendants' argument that they had not been
3 properly served, but dismissed without prejudice for Peter to refile.
4 Exh. BB. Peter never sought to refile the complaint.

5 The fact that an adversary proceeding was dismissed without
6 prejudice is not dispositive on the issue of whether the action was
7 resolved in favor of the claimant. Portland Trailer & Equip., Inc., 182
8 Or. App. at 356. Here, the bankruptcy court noted that the claim did
9 not suffer from a mere technical deficiency, but instead failed to
10 allege facts to support a plausible claim. Peter declined to remedy the
11 deficiencies in the complaint and refile it.

12 The bankruptcy court's determination that the complaint was
13 facially inadequate and Peter's decision to abandon the action both
14 reflect adversely on the merits of the underlying case. This action was
15 terminated in defendants' favor.

16 (viii) 2015 Persolve Case

17 This case was dismissed for lack of subject matter jurisdiction
18 after Peter failed, despite voluminous filings on the issue, to
19 establish that the court had subject matter jurisdiction. Peter was
20 given additional time for further briefing, yet he failed to file any
21 further briefing or seek to amend the complaint to cure the
22 jurisdictional defects. The court's dismissal without leave to amend
23 reflects on the merits of the case, and shows that the proceeding was
24 terminated in defendants' favor.

25 (ix) 2017 Susan Domestic Violence Case

26 This case was dismissed without prejudice after Susan failed to

1 appear for a hearing on the requested restraining order.

2 Ordinarily, the court would be extremely hesitant to find that
3 failure to appear at a domestic violence restraining order hearing could
4 form the basis of a wrongful use of civil proceedings claim. However,
5 Susan's failure to appear, in addition to the fact that the case was
6 actually filed by Peter, leads to the conclusion that Susan's failure to
7 appear was either because she was unaware of the action, having failed
8 to file it on her own behalf, or was a result of Peter's determination
9 not to pursue this litigation against Victor.

10 In either event, under the very unusual circumstances surrounding
11 the filing of this action, the court finds that Peter's failure to
12 pursue this action is an admission that the claim lacked merit.
13 Therefore, the dismissal of the action reflects adversely on the merits
14 of the case. This action was terminated in Victor's favor.

15 c. Absence of probable cause to prosecute the action

16 For the proceedings that were terminated in defendants' favor,
17 defendants also need to show that Peter lacked probable cause to
18 prosecute the actions. The six actions remaining to be considered are:

19 2008 Minnesota Case
20 2005 Phillip v. Peter Case
21 2011 MM1 Case
22 2013 Nevada Bankruptcy Adversary Proceeding
23 2015 Persolve Case
24 2017 Susan Domestic Violence Case

25 "'Probable cause,' in the wrongful-initiation context, means that
26 the person initiating the civil action 'reasonably believes' that he or
she has a good chance of prevailing - that is, he or she has an
objectively reasonable, subjective belief that the claim has merit."

1 SPS of Or., 258 Or. App. at 218. To show probable cause, defendants
2 must demonstrate either that the person initiating the claim lacked a
3 belief that there was a good chance of establishing the claim in court
4 or that the belief was objectively unreasonable. Gunter v. The Guardian
5 Press Found., Inc., 2006 WL 1030182, at *5 (D. Or. Mar. 28, 2006).

6 Under either of those standards, defendants carried their burden of
7 proof with regard to the six remaining Prior Lawsuits.

8 The evidence presented at trial demonstrated that Peter did not
9 have a reasonable belief that he would prevail. His testimony showed
10 that he was often unconcerned with the legal merits of his case, as
11 demonstrated by his testimony and legal tactics.

12 Peter is not an ordinary pro se litigant. Peter testified that he
13 graduated from law school. He has demonstrated through his voluminous
14 filings in this court that he possesses a sophisticated understanding of
15 the federal and local rules (although his understanding is not always
16 correct) and an ability to conduct legal research and perform legal
17 analysis. In other words, Peter had the ability to determine whether
18 the claims he was filing had any merit.

19 Despite that ability, the evidence presented at trial showed
20 numerous instances in which Peter did not concern himself with the
21 merits of his claims. He testified that his primary interest in filing
22 the various lawsuits against defendants was to achieve "family love,
23 peace, and harmony." He further testified that the lawsuits were
24 intended to be a wake-up call that the family had a problem and that he
25 was not happy with the way things were going.

26 He specifically testified that he filed the cross-claims against

1 defendants in the 2005 Phillip v. Peter Case to posture for settlement
2 with Phillip, that is, to show Phillip that he was serious about moving
3 forward. He testified that his goal in filing all of the other Prior
4 Lawsuits was to get defendants to settle with him, perhaps over dinner
5 and a bottle of wine.

6 The documentary evidence further supports this conclusion. Despite
7 Peter's legal acumen and numerous opportunities to craft and recraft his
8 complaints to meet the minimum legal standards to state facially
9 meritorious claims, Peter failed to do so at any time. None of the
10 numerous claims against any of the defendants proceeded beyond the
11 motion to dismiss phase of any case, until this adversary proceeding.

12 Additionally, some of the Prior Lawsuits contain allegations of
13 contact between Peter and defendants that are simply not credible and
14 which the court finds are false. With regard to the allegations of
15 identity theft in the 2015 Persolve Case, which were repeated in other
16 Prior Lawsuits, Peter testified that he personally interacted with
17 Anthony and Victor and witnessed them rifling through his documents.
18 Peter alleged in the 2008 Minnesota Case, and again in the 2011 MM1
19 Case, that Victor and Evye supplied him with tainted eye drops. Exh. L,
20 X. In the 2017 Susan Domestic Violence Case, he alleged that Victor
21 personally confronted Susan with a firearm in 2017.

22 In contrast, each of the defendants testified, credibly, that they
23 had had minimal or no contact with Peter over the course of their adult
24 lives. Peter's siblings, Victor, Anthony, and Barbara, had not seen
25 Peter in decades. Specifically, Victor testified that he had not seen
26 Peter for approximately forty years until Peter deposed him in this

1 case. Evye credibly testified that she had never seen or had contact
2 with Peter before this case.

3 I find that Peter's testimony that he witnessed Anthony and Victor
4 taking his personal papers from his room or office at the family home on
5 Baywood Drive is false.

6 Peter testified that the allegations he made in the 2008 Minnesota
7 Case, that Victor examined him at Victor's home and gave Peter eye drops
8 on February 1, 2006, were accurate. Peter testified that the exam took
9 place on a Saturday. Victor denied that the meeting took place.
10 Peter's testimony was false that he visited Victor at Victor's home and
11 was examined by Victor at that time. Victor's testimony was credible;
12 Peter's was not. In addition, February 1 of 2006 was a Wednesday, not a
13 Saturday.

14 Peter gave conflicting testimony about Evye's involvement in the
15 eye drops scandal. He testified during this trial that Victor was the
16 only one present when Victor gave him the eye drops. Yet he sued Evye,
17 a neurologist, for medical malpractice in the 2008 Minnesota Case. If
18 Peter's testimony was true, and Victor was the only one home when Peter
19 was examined in Victor's home, there could be no factual basis for suing
20 Evye. In fact, Peter testified in this trial that he named her in the
21 lawsuit because Evye has an office in the same office building as
22 Victor, so he thought that she must be involved in Victor's alleged
23 provision of tainted eye drops. There is absolutely no evidence to
24 support a finding of probable cause to include Evye in the 2008
25 Minnesota Case.

26 As for the allegation in the 2017 Susan Domestic Violence Case that

1 Victor personally confronted Susan with a firearm, Victor credibly
2 testified that he never confronted Susan. In fact, he testified, and
3 the court believes him, that he has never met Susan.

4 Peter filed claims against defendants relying on facts he knew at
5 the time to be false. Under those circumstances, he could not have
6 possessed an objectively reasonable, subjective belief that his claim
7 had merit. He testified at trial that he "guessed" about whether some
8 of the most important alleged conduct of defendants occurred. Peter
9 tried to retreat from this testimony when he realized the use of the
10 word "guessed" was probably damning, but the damage had been done.

11 Even if Peter had a subjective belief that his allegations were
12 true, his beliefs were not objectively reasonable. His allegations are
13 based almost exclusively on wild suppositions with no basis in fact. He
14 summed up the basis for the allegations as "quintessential detective
15 analysis." For example, according to Peter, defendants had motive and
16 opportunity; a motive to financially and emotionally distract Peter from
17 pursuing claims against the family trust, and opportunity because of
18 Victor and Anthony's access to Peter's records at the family home. His
19 only evidence in support of his claims against Victor and Anthony with
20 regard to allegations of stealing his identification documents was his
21 testimony of watching them take some of his papers from the family home.
22 As explained above, Peter's testimony about that incident is not
23 credible in light of the credible testimony from Victor and Anthony that
24 they had sparse if any contact with Peter and that they never took any
25 of his documents from the family home.

26 Defendants have established that Peter lacked probable cause to

1 prosecute the remaining Prior Lawsuits.

2 d. Existence of malice

3 "Malice," in the context of a wrongful initiation claim, is "the
4 existence of a primary purpose other than that of securing an
5 adjudication of the claim." Erlandson v. Pullen, 45 Or. App. 467, 477
6 (1980). The fact finder may permissibly infer in most cases that an
7 action brought in the absence of probable cause is brought with malice.
8 Alvarez v. Retail Credit Ass'n, 234 Or. 255, 263-65 (1963); SPS of Or.,
9 258 Or. App. at 219.

10 As described in the preceding section, the evidence shows that
11 Peter did not file the Prior Lawsuits with the intent to resolve
12 legitimate legal disputes. Instead, he appears to have engaged in
13 litigation for the primary purpose of forcing his siblings and their
14 families to interact with him. The court cannot conceive a more
15 improper purpose of a lawsuit than to force the opposing party into an
16 unwanted relationship. Peter testified numerous times and at
17 substantial length that his primary aim in filing the Prior Lawsuits was
18 precisely that. Therefore, the court concludes that the remaining Prior
19 Lawsuits were filed with malice.

20 e. Damages

21 Defendants seek two types of damages based on the Prior Lawsuits:
22 attorney fees and damages for emotional distress.

23 A claim for wrongful use of civil proceedings does not require
24 proof of special injury, "beyond the expense and other consequences
25 normally associated with defending against unfounded legal claims." ORS
26 31.230(1).

1 "When the essential elements of a cause of action for wrongful
2 civil proceedings have been established, the plaintiff is entitled
3 to recover, inter alia, reasonable attorney fees; costs incurred in
defending against the proceedings; and 'any other loss of a
pecuniary character that [the plaintiff can prove] resulted from
the initiation of civil proceedings.'"

4 Liberty Nat. Prod., Inc. v. Hoffman, 2012 WL 1203979 at *8 (D. Or. Apr.
5 11, 2012)(quoting Restatement (Second) of Torts § 681, comments d and
6 e). Emotional distress damages are recoverable. Lee v. Mitchell, 152
7 Or. App. 159, 180 (1998).

8 (i) Attorney fees

9 In support of their request for damages in the form of attorney
10 fees incurred in the Prior Lawsuits, defendants presented a number of
11 documents related to attorney fees, which they argue represent a portion
12 of the legal expenses they have incurred as a result of the litigation
13 filed against them.

14 As explained above, not all of the Prior Lawsuits give rise to a
15 right of recovery. For example, Exhibits A and G appear to relate
16 either to the 2006 Nevada Case involving the Szanto parents' trust or to
17 other matters involving the trust. Defendants were not involved as
18 individuals in litigation over those trust matters. Exhibit F appears
19 to relate to services provided to Daha Investments, which is an entity
20 related to defendants but is not named as a defendant in this adversary
21 proceeding.

22 In addition, defendants submitted insufficient evidence to
23 establish the amount of attorney fees paid for any of the Prior
24 Lawsuits. Defendants' exhibits primarily were billing or account
25 summaries, which failed to include any detail from which it could be
26 determined what services were the basis for the charges shown on the

1 summaries. For example, Victor testified that Exhibit C related to
2 California matters that began in 2006, but the exhibit is simply a
3 summary of payments made, showing neither the services rendered nor who
4 made the payments. Exhibit B apparently relates to the Nevada
5 bankruptcy case, but the evidence does not establish whether defendants
6 paid these bills. Exhibit E includes a list of services provided to
7 Victor and Evye, and Victor testified that he paid for these services,
8 but it is not clear whether these services relate to any of the Prior
9 Lawsuits. Exhibit D shows services provided to Victor and Evye,
10 apparently for the Marina Marketplace 2 LLC that they own. Although
11 Victor testified that he paid for these services, it is not clear
12 whether he paid those bills in his capacity as an individual or on
13 behalf of Marina Marketplace 2 LLC, which is not a defendant in this
14 adversary proceeding.

15 I also note that there was testimony that defendants were not even
16 aware that some of the Prior Lawsuits had been filed until they were
17 discovered during the course of this adversary proceeding. As a result,
18 defendants incurred no attorney fees in connection with those cases.

19 The court has no doubt that defendants spent significant funds over
20 the years defending these cases. But the exhibits and testimony
21 presented at trial simply did not provide enough detail or certainty to
22 form a basis for determining what amount was incurred in defending
23 against the Prior Lawsuits.

24 Therefore, defendants did not carry their burden to demonstrate
25 that the attorney fees represented in Exhibits A-G are compensable
26 damages.

1 (ii) Emotional distress damages

2 Defendants seek damages for the emotional distress they allege they
3 suffered as a result of the Prior Lawsuits.

4 The allegations Peter made against defendants are heinous. Peter's
5 allegations include such behavior as withholding food and water from
6 Klara to induce her to change her estate plan. He has accused Victor
7 and Evye, who are both licensed physicians, of giving Klara mind-
8 altering drugs. He has asserted that Victor and Anthony "hoodwinked"
9 the California motor vehicles department into issuing a falsified
10 drivers license in Peter's name, which Victor and Anthony then used to
11 steal Peter's identity and obtain credit in his name. Peter has never
12 presented any evidence to support any of those claims, basing them
13 solely on his own speculation and guesswork.

14 Peter admitted at trial that his mother, Klara, never told him
15 anyone was withholding food and water from her or mistreating her in any
16 way, much less that Victor or any of the other defendants were
17 responsible.⁷

18 Victor, Evye, Anthony, and Barbara all testified credibly and
19 persuasively to their humiliation at having to face allegations of
20 inhumane, abusive treatment of Klara. Victor testified that he faces
21 each day in fear, from both a physical and a legal standpoint, because
22 Peter has been able to use the legal system as a tool to terrorize and

23 ⁷ Peter was elusive in his testimony. After testifying at his
24 deposition and at the trial that his mother never told him that she had
25 been deprived of food or water, he refused to answer "yes" or "no" to a
26 question about whether Klara had ever told him that she had been refused
food or water. He testified that she said she was very hungry and did
not sound right during a telephone call he had with her while he was
hospitalized in Israel.

1 harass him and his family. He further testified that he felt like he
2 was a victim of terrorism and was being extorted by Peter. Victor
3 testified that he was distraught over the claims of medical malpractice
4 made in the 2008 Minnesota Case.

5 Evye testified about her anguish over the Prior Lawsuits and the
6 allegations of abuse of Victor's parents, as well as the anguish she
7 felt over allegations of medical malpractice made in the 2008 Minnesota
8 Case. She said that Peter's actions were very disturbing and were
9 damaging to her soul. She is fearful of what lawsuit will come next.

10 Barbara testified that she was horrified by the allegations of
11 abuse of her parents, because she is not the kind of person to do any of
12 what Peter claimed she had done. She further testified that she was
13 just horrified and dumbstruck and cried a lot. She is very scared, not
14 knowing from day to day if there is going to be another lawsuit. She
15 lives under stress all of the time, because she is worried about what is
16 coming next.

17 Anthony testified that he has lost confidence in the legal system.
18 He is scared about what Peter is capable of, and he fears Peter a great
19 deal. Anthony testified that he has serious medical issues that he is
20 trying to deal with, and that the cumulative stress of the Prior
21 Lawsuits has made everything a lot worse for him.

22 In summary, Victor, Evye, Anthony, and Barbara all easily carried
23 their burden to show that they have suffered emotional damage as a
24 result of Peter's incessant filing of lawsuits against them. Victor and
25 Evye have had to deal with the largest number of legal actions against
26 them, and have been the most frequent target of Peter's harassment.

1 Placing a monetary value on the emotional distress suffered by
2 defendants in these types of cases is difficult. There is no magic
3 formula for determining a proper sum. Awards for emotional distress are
4 highly subjective and depend to a large part on the court's assessment
5 of the demeanor of the witnesses. Fox v. GMC, 247 F.3d 169, 180 (4th
6 Cir. 2001); Baker v. John Morrell & Co., 266 F.Supp.2d 909, 948 (N.D.
7 Iowa 2003).

8 I conclude that Victor, Evye, Anthony, and Barbara have established
9 that they are entitled to awards of damages for the emotional toll the
10 Prior Lawsuits have had on them. In determining the appropriate amounts
11 to award, the court has surveyed numerous Oregon cases awarding
12 emotional distress damages, as well as considered the court's own
13 experience in awarding such damages in cases such as contempt actions
14 for violations of the automatic stay or the discharge injunction. The
15 court has considered the demeanor of the witnesses, and finds their fear
16 and anguish is genuine.

17 These defendants' fear and anguish is not fleeting, it is
18 significant, and it is reasonable, in light of the number of actions
19 Peter has filed against them and the types of allegations he has made
20 against them, all without any evidentiary basis. Taking into account
21 the number of Prior Lawsuits filed against each of these defendants and
22 their testimony about how those lawsuits have affected them, the
23 appropriate amount of damages for emotional distress for each defendant
24 is as follows.

25 Victor will be awarded \$165,000, made up of \$50,000 for the 2008
26 Minnesota Case, \$25,000 for the 2005 Phillip v. Peter Case, \$25,000 for

1 the 2011 MM1 Case, \$25,000 for the 2013 Nevada Bankruptcy Adversary
2 Proceeding, \$30,000 for the 2015 Persolve Case, and \$10,000 for the 2017
3 Susan Domestic Violence Case.

4 Evye will be awarded \$105,000, made up of \$50,000 for the 2008
5 Minnesota Case, \$25,000 for the 2011 MM1 Case, and \$30,000 for the 2015
6 Persolve Case.

7 Anthony will be awarded \$50,000, made up of \$25,000 for the 2005
8 Phillip v. Peter Case and \$25,000 for the 2013 Nevada Bankruptcy
9 Adversary Proceeding.

10 Barbara will be awarded \$25,000 for the 2005 Phillip v. Peter Case.

11 REQUEST FOR INJUNCTION AND VEXATIOUS LITIGANT DESIGNATION

12 All defendants seek an injunction limiting Peter from filing any
13 further lawsuits against defendants or any of their affiliated entities
14 in bankruptcy courts and district courts nationwide.⁸

15 As a preliminary matter, this court does not believe it has the
16 authority to limit or prohibit Peter from asserting claims in the
17 district courts. Defendants have not cited any authority, nor has the
18 court found any, that would allow a bankruptcy court to issue an
19 injunction or pre-filing order that would apply to actions filed in a
20

21 ⁸ Defendants request "entry of an order requiring Plaintiff to obtain
22 pre-filing permission from this Court before filing any subsequent suit
23 against any of the Defendants in this case[,]" Doc. 66 at
24 ¶ 174, and "entry of an order requiring Plaintiff to obtain pre-filing
25 permission, from this Court or any other federal court, prior to filing
26 any subsequent suit that pertains to any of the Defendants, Plaintiff's
purported interest in any assets of the Defendants, Paul Szanto, Klara
Szanto, and any trusts related to the foregoing." Id. at ¶ 175.
Because the second request appears to encompass all relief contemplated
by the first, the court will only address the second.

1 district court. However, the court does have the authority to make
2 proposed findings of fact and conclusions of law, which may be
3 transmitted to the district court with a recommendation that the
4 district court adopt the findings and conclusions. See 28 U.S.C. §
5 157(c)(1); Fed. R. Bankr. P. 9033.

6 Federal courts have inherent power "to regulate the activities of
7 abusive litigants by imposing carefully tailored restrictions under the
8 appropriate circumstances." De Long v. Hennessey, 912 F.2d 1144, 1147
9 (9th Cir. 1990) (internal quotations omitted). Pursuant to the All
10 Writs Act, 28 U.S.C. § 1651(a), and section 105 of the Bankruptcy Code,
11 11 U.S.C. § 105, bankruptcy courts possess the power to regulate
12 vexatious litigation. Stanwyck v. Bogen, 450 B.R. 181, 200 (Bankr. C.D.
13 Cal. 2011); Goodman v. Cal. Portland Cement Co., 420 B.R. 1, 11 (Bankr.
14 D. Ariz. 2009). "This power includes the power to issue restrictive
15 pre-filing orders against vexatious litigants." In re Bertran, 2018 WL
16 1704306, *5 (9th Cir. BAP Apr. 6, 2018) (unpublished).

17 "Because such orders constrain a litigant's fundamental right of
18 access to the courts . . . the court must" provide notice and make
19 certain specific findings. Id. at *6. The court must:

20 "(1) give litigants notice and an opportunity to oppose the
21 order before it is entered; (2) compile an adequate record for
22 appellate review, including a listing of all the cases and
23 motions that led the district court to conclude that a
24 vexatious litigant order was needed; (3) make substantive
findings of frivolousness or harassment; and (4) tailor the
order narrowly so as to closely fit the specific vice
encountered."

25 Id. (quoting Ringgold-Lockhart v. Cnty. of L.A., 761 F.3d 1057, 1062
26 (9th Cir. 2014)).

1 The Ninth Circuit has identified five factors to determine whether
2 the litigant's actions were sufficiently frivolous and the remedial
3 action sufficiently narrow:

4 "(1) the litigant's history of litigation and in particular
5 whether it entailed vexatious, harassing or duplicative
6 lawsuits; (2) the litigant's motive in pursuing the
7 litigation, e.g., does the litigant have an objective good
8 faith expectation of prevailing?; (3) whether the litigant is
9 represented by counsel; (4) whether the litigant has caused
needless expense to other parties or has posed an unnecessary
burden on the courts and their personnel; and (5) whether
other sanctions would be adequate to protect the courts and
other parties."

10 Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007)
11 (adopting factors in Safir v. U.S. Lines, Inc., 792 F.2d 19 (2nd Cir.
12 1986)). For the reasons that follow, defendants have met their burden
13 of showing that a pre-filing order should be entered against Peter.

14 1. Notice and an opportunity to oppose the order before it is entered

15 Defendants' answer, filed on March 6, 2017, includes a counterclaim
16 for injunctive relief against Peter and a request for vexatious litigant
17 designation. See Doc. 66. Defendants elaborated on their request for a
18 vexatious litigant order in their trial memorandum filed a month before
19 trial. Doc. 486. The court conducted a three-day trial, plus provided
20 approximately two hours of time for closing argument on a fourth day.
21 Peter actively participated in the trial.

22 Peter had ample notice of the request for injunctive relief and
23 more than ample opportunity to oppose the request before and at trial.

24 In light of the fact that a request for an injunction was pled from
25 the start in defendants' counterclaim and given that Peter had ample
26 opportunity to respond to that request and defend at trial, the court

1 concludes that Peter had notice and an opportunity to oppose any order
2 before it was entered.

3 2. Cases and motions leading the court to conclude that a vexatious
4 litigant order is needed

5 Peter is a prolific pro se litigator, and has been for at least
6 more than ten years. His most frequent targets have been his family
7 members and entities they own. In particular, Peter has sued Victor,
8 Evye, and Anthony multiple times; he has sued Barbara twice before
9 filing this adversary proceeding. He has extended the targets of his
10 claims to include his siblings' spouses, as well as the next generation
11 of the family, including his nieces Nicole and Kimberley, and
12 Kimberley's spouse.

13 Peter's suits against his family are numerous and include those
14 brought in state and United States district and bankruptcy courts, in
15 multiple jurisdictions. The litigation began with the 2006 Nevada Case.
16 Although that case was not an action against defendants in this case for
17 purposes of the wrongful use of civil proceedings claims analyzed above,
18 it is part of the litigation net thrown by Peter that has trapped his
19 family members for years. All of the Prior Lawsuits listed at the
20 beginning of this Memorandum Opinion, plus the current adversary
21 proceeding, provide support for entering a vexatious litigant order.

22 These actions demonstrate that Peter's lawsuits against defendants
23 have been numerous and repetitive, especially as to Victor, Evye,
24 Anthony, and Barbara. The number of lawsuits filed against his family
25 members, along with the overlapping nature of the claims contained in
26 the lawsuits, serve to support defendants' claim for injunctive relief.

1 3. Finding of frivolousness or harassment

2 To analyze whether litigation has been frivolous or harassing, the
3 court considers four factors⁹ enunciated by the Second Circuit. See
4 Molski, 500 F.3d at 1057; Safir, 792 F.2d 19.

5 In addition to looking at the Safir factors, this court must "look
6 at 'both the number and content of the filings as indicia' of the
7 frivolousness of the litigant's claims." De Long, 912 F.2d at 1148
8 (quoting In re Powell, 851 F.2d 427, 431 (D.C. Cir. 1988)).

9 "Frivolous litigation is not limited to cases in which a legal
10 claim is entirely without merit. It is also frivolous for a
11 claimant who has some measure of a legitimate claim to make false
12 factual assertions. Just as bringing a completely baseless claim
13 is frivolous, so too a person with a measured legitimate claim may
14 cross the line into frivolous litigation by asserting facts that
15 are grossly exaggerated or totally false."

16 Molski, 500 F.3d at 1060-61.

17 a. The litigant's history of litigation and, in particular,
18 whether it entailed vexatious, harassing or duplicative lawsuits

19 For the reasons outlined earlier in this Memorandum Opinion,
20 the documentary evidence and defendants' credible and consistent
21 testimony at trial demonstrate that Peter's lawsuits against them
22 are harassing and duplicative.

23 The extreme nature of the unsubstantiated allegations made by
24 Peter, and his own testimony, lead the court to conclude that Peter
25 filed the lawsuits for the purpose of harassment.

26 Peter's cavalier attitude toward the damage that such
27 unsubstantiated allegations cause when placed in the public record,
28 whether a complaint is served or not, is illustrative of his

⁹ Although Molski and Safir set out five factors, only the first four
relate to whether a litigant's filings were frivolous.

1 callous disregard for basic standards of pleading and the integrity
2 of the courts. Our judicial system is not intended to give persons
3 a free pass to make any allegations the person dreams up, with
4 absolutely no supporting evidence, circumstantial or otherwise.
5 Such conduct, especially when repetitive, must be addressed and
6 stopped. Both defendants and the judicial system deserve
7 protection from Peter's litigation abuses.

8 According to his testimony, Peter graduated from law school
9 and is a candidate for the California Bar. He has been litigating
10 against these defendants, on basically the same claims, in state
11 and federal courts for more than 14 years. He claims to have
12 clerked for judges and worked in the federal court system. Despite
13 his legal training, experience as a clerk, and many years of
14 litigation experience, he sees fit to repeatedly file numerous
15 claims that have no factual basis.

16 A cursory review of the dockets in Peter's main case, and in
17 the related adversary proceedings pending in this court,
18 demonstrate significant evidence of duplication and lack of
19 truthfulness.¹⁰

20 For example, Peter submitted fabricated or altered documents
21 to this court and the Office of the United States Trustee (the
22 "UST"). This court ruled at least twice that Peter has altered or
23 fabricated documents. See Order Granting Motion to Convert Case
24 from Chapter 11 to Chapter 7, Main Case No. 16-33185, Doc. 278
25 (finding that Peter provided altered bank statements to the UST);

26 ¹⁰ The court granted defendants' request to take judicial notice of a
number of documents from this adversary proceeding and the main case.
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1 Order Denying Motion For Protective Order, Adv. No. 18-3022, Doc.
2 201 (finding that Debtor submitted altered photograph of mailing
3 envelope from the UST).

4 This court has sanctioned Peter in this adversary proceeding
5 for discovery abuses, Doc. 163, and in Adv. No. 18-3022, Doc. 218.
6 In the main bankruptcy case, this court found Peter in contempt for
7 his failure to cooperate with his Chapter 7 trustee in recovering
8 several hundred thousand dollars Peter transferred to Singapore in
9 violation of this court's orders. Order Granting Trustee's Motion
10 for Contempt, Main Case No. 16-33185, Doc. 590.

11 As in Molski, Peter has lied and repeatedly filed meritless
12 actions with factually similar or identical allegations. The court
13 concludes that the Peter's history of litigation entails vexatious,
14 harassing or duplicative lawsuits against defendants, and a pattern
15 of a lack of truth.

16 b. Whether the litigant had an objective good faith
17 expectation of prevailing in those actions

18 For all the reasons the court outlined earlier in this
19 opinion, the court concludes that defendants have met their burden
20 of proof that Peter had no reasonable objective basis to believe
21 his claims were true and therefore no objective good faith
22 expectation that he would prevail in the actions.

23 c. Whether the litigant was represented by counsel

24 Defendant has not been represented by counsel in his Oregon
25 bankruptcy case or this action, and there is no evidence that he
26

1 retained counsel in any of the Prior Lawsuits.¹¹

2 Peter has made numerous unsupported representations in his
3 main case and related adversary proceedings that he either will or
4 has attempted to get counsel. Usually those assertions were
5 offered in an attempt to obtain extensions of time and create
6 delay. The fact that Peter proceeds pro se in essentially every
7 case he files, in combination with the high volume of filings,¹²
8 supports a finding of frivolousness. See, e.g., Abdullah v. Gatto,
9 773 F.2d 487, 488 (2nd Cir. 1985) (noting that multiple pro se
10 filings were appropriately redressed by a bar on future pro se
11 filings).

12 d. Whether the litigant caused needless expense to other
13 parties or imposed an unnecessary burden on the courts and their
14 personnel

15 Defendants introduced evidence of a portion of the costs of
16 the multiple proceedings Peter has filed against them. See

18 ¹¹ The court understands that Peter had counsel when he filed his 2013
19 Chapter 13 bankruptcy case in the Central District of California. Peter
20 filed the adversary proceeding against defendants in that case pro se.

21 ¹² For example, in the main bankruptcy case in this court, there were
22 more than 800 docket entries by the time the trial in this adversary
23 proceeding began, many of which were documents and motions filed by
24 Peter, or notices or orders related to documents he filed. Case No. 16-
25 33185-pcm7. In this adversary proceeding, which was not a particularly
26 complex case, there were 550 docket entries by the time the trial began.
Adv. No. 16-3114. Similarly, many of those docket entries were for
documents or motions filed by Peter, or notices or orders necessitated
by Peter's numerous filings. The delay of nearly three years from the
time the complaint was filed until this case was tried in August 2019
was caused, in this court's view, in large part by delay tactics
employed by Peter.

1 Exhibits A through G. Victor testified that those exhibits
2 represent a small percentage of the total fees and costs defendants
3 have paid through the years in defending against the Prior
4 Lawsuits. Evye testified that she contacted some of the law firms
5 to ask for payment ledgers showing the amounts billed and paid.
6 She also testified that the fees represented in these exhibits were
7 incurred in connection with Peter's claims against the family.
8 Anthony testified that he was not a good bookkeeper and initially
9 failed to pay two attorney fee bills relating to litigation with
10 Peter, for which he was sued for payment by the law firms. He
11 further credibly testified that both bills were resolved by payment
12 of an agreed amount, but he could not recall the precise amount of
13 the payments.

14 The exhibits offered by defendants and their testimony,
15 although not sufficient to support an award of a particular amount
16 of monetary damages on their first counterclaim, do sufficiently
17 demonstrate that years of defending against Peter's litigation has
18 cost them substantial amounts of money. The attorney fee request
19 defendants made after they were granted summary judgment in this
20 adversary proceeding was almost \$200,000. The evidence
21 demonstrates that Peter's litigation has cost the defendants
22 dearly.

23 Furthermore, even a cursory review of the dockets in the Prior
24 Lawsuits, this adversary proceeding, and the main bankruptcy case
25 show that Peter has filed motion after motion, has failed to abide
26 by the general rules of discovery, and has falsified documents and

1 fabricated testimony. Defendants' need to deal with Peter's
2 numerous motions, appeals, requests for reconsideration, and
3 requests for extensions of time caused them to incur unnecessary
4 and undue expense.

5 Defendants' testimony also portrayed the other economic and
6 non-economic costs of Peter's claims. Defendants feel stalked.
7 They all testified, with conviction, that they have lost faith in
8 our legal system as a result of having to deal with Peter's
9 incessant, multiple and every-expanding lawsuits. They feel that
10 Peter uses the legal system as a weapon to terrorize them.
11 Furthermore, defendants testified that that they live in a state of
12 fear. They fail to understand how a person can allege any facts he
13 dreams up, file false documents, and trick courts into entering
14 default orders, over and over again, without consequence or
15 repercussion.

16 Defendants testified they are emotionally and physically
17 scared of Peter. Their fear is real.

18 Nicole testified that she is reluctant to form a close
19 relationship with a partner for fear a partner might get dragged
20 into Peter's next lawsuit, as has happened to her brother-in-law
21 Austin Bell. All of the defendants had to take three days out of
22 their schedules to come from out-of-state to Portland for trial.
23 Some missed work. It is true that the trial involved defendants'
24 counterclaims against Peter, but it was Peter's eleventh lawsuit
25 that finally made them decide to strike back.

26 Peter's litigation tactics in this case, his main case, and

1 other related adversary proceedings have caused substantial
2 needless burden on this court. The court has had to rule on
3 numerous specious motions, including motions to reconsider and
4 improper and abusive discovery motions or objections.

5 For the reasons stated above, the court finds that defendants
6 have shown that Peter's conduct in this case, the main bankruptcy
7 case, and the Prior Lawsuits caused needless expense to other
8 parties and imposed an unnecessary burden on the courts and their
9 personnel.

10 4. Narrowly tailored order so as to closely fit the specific vice
11 encountered

12 As part of this factor, the court considers whether other sanctions
13 would be adequate to protect the courts and other parties. See Molski,
14 500 F.3d at 1058 (five factors set out in Safir provide helpful
15 framework for applying factors (3) and (4) outlined in De Long).

16 Peter's comments at trial make it clear he will not stop his
17 spurious lawsuits just because he has lost on his claims in this
18 adversary proceeding. Near the conclusion of trial, he announced that
19 his next lawsuit will be a wrongful death suit against defendants for
20 causing his son Phillip's death. Absent intervention, Peter will not
21 stop. As more jurisdictions enter pre-filing orders, he will simply
22 move jurisdictions or court systems to find another venue to victimize
23 defendants. His conduct since being declared a vexatious litigant by
24 the California state courts demonstrates this behavior.

25 In 2011, the California Superior Court declared Peter a vexatious
26 litigant ("California Order"). Exh. DDD. After entry of that order,

1 Peter filed bankruptcy in California. Along with the main bankruptcy
2 case, he filed the 2013 California Bankruptcy Adversary Proceeding,
3 asserting claims similar to those asserted in this adversary proceeding.
4 After the California bankruptcy case and the 2013 California Bankruptcy
5 Adversary Proceeding were dismissed, Peter moved his efforts to Nevada,
6 where he filed Chapter 11. Along with his Nevada bankruptcy case, he
7 filed the 2013 Nevada Bankruptcy Adversary Proceeding, again alleging
8 claims similar to those filed in his other cases against the family.
9 His Nevada Chapter 11 was dismissed, as was the 2013 Nevada Bankruptcy
10 Adversary Proceeding.

11 Not to be deterred, Peter represented that he had moved to Oregon,
12 and commenced his third bankruptcy case in July 2016, in this court. In
13 August 2016, he commenced this adversary proceeding, using the filing of
14 his bankruptcy case in this district to support jurisdiction in this
15 court over state law claims against defendants, none of whom live in
16 Oregon.

17 As have the many courts that preceded this one, this court has been
18 burdened by Peter's excessive number of meritless motions, delay
19 tactics, discovery abuses, and baseless requests for reconsideration.

20 Given Peter's stated intent to commence more litigation, and the
21 volume and cost of the litigation already pursued against defendants,
22 the substance of which he has never supported with any credible
23 evidence, monetary sanctions are inadequate to cause debtor to cease his
24 litigation efforts against his family. Moreover, monetary sanctions
25 would have no effect on the burden Peter is regularly placing on his
26 family members, as well as on this and other courts. Further, this

1 court has no confidence that Peter would voluntarily pay any sanction
2 awarded.¹³

3 The court therefore finds that defendants have met their burden
4 that other sanctions would not be adequate to address Peter's conduct.
5 The only remedy to protect the defendants from further harm is a
6 geographically broad pre-filing order that is narrowly tailored to
7 closely fit the specific vice encountered.

8 This court may look to findings from prior vexatious litigant
9 orders in other courts to support entry of such an order. See Bertran,
10 2018 WL 1704306 at *6.

11 As stated above, Peter was declared a vexatious litigant in
12 California in 2011. Exh. DDD. Peter is also subject to a pre-filing
13 order issued by the Ninth Circuit Court of Appeals. See Ninth Circuit
14 Case No. 17-80195 ("Ninth Circuit Order").¹⁴ The Court of Appeals issued
15 the Ninth Circuit Order after entering its own order to show cause due
16 to the frequency of Peter's appeals to the Ninth Circuit, and their
17 consistent lack of merit.

18 The previous orders entered by other courts provide guidance as to

19 ¹³ Peter recently filed a request in Adv. No. 18-3022 to be excused
20 from paying a \$222 discovery sanction levied against him, claiming an
21 inability to pay it. Doc. 228. In the motion, he represented that he
22 would need to hitchhike to Seattle for his deposition. He would have to
23 live off the land, including eating native plants, quail, doves, and
24 snakes, because he could not afford food. The court has serious doubts
25 about Peter's plea of poverty. Regardless, this is further indicia that
Peter would be unlikely to ever voluntarily pay a monetary sanction,
particularly one significant enough to deter him from future frivolous
filings.

26 ¹⁴ The Court informed the parties at closing argument that it intended
to take judicial notice of the Ninth Circuit Order and associated
pleadings, as well as other court filings the court deemed relevant.
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1 how to narrowly tailor an order to address the vice at hand. The Ninth
2 Circuit Order applies to all notices of appeal filed by Peter, other
3 than where he has counsel or the district court certifies that the
4 appeal is not frivolous. As with the California Order, the Ninth
5 Circuit Order is not a bar to filing, but a restriction on filing that
6 may be overcome in the appropriate situation.

7 The depth of Peter's litigiousness dictates that this court should
8 enter a broad order. The order will apply to Peter's ability to file
9 new litigation in all bankruptcy courts nationwide. A narrower
10 geographic limitation would not be effective, because Peter has already
11 sued defendants in California, Nevada, Oregon, and Minnesota. Peter's
12 willingness to use any court's jurisdiction, whether proper or not,
13 shows that it would be ineffective to limit the pre-filing order to any
14 specific geographic area. However, the court will limit the breadth of
15 that order in two ways.

16 First, Peter will not be completely banned from filing new
17 adversary proceedings or contested matters against defendants in all
18 bankruptcy courts. Instead, he will be allowed to file adversary
19 proceedings or contested matters if he is represented by counsel
20 licensed or admitted *pro hac vice* to practice in the applicable
21 district. The order also will allow for pre-filing review of the
22 complaint or contested matter by the chief bankruptcy judge in the
23 applicable district to determine, in his or her sole discretion, whether
24 the court should allow the complaint or contested matter to proceed.

25 Second, the order will be limited to adversary proceedings or
26 contested matters filed against Victor, Evye, Anthony, Mariette,

1 Barbara, David Alexander,¹⁵ Kimberley, Nicole, Austin Bell, the estate of
2 Paul or Klara Szanto, any trust in which any of the above persons serve
3 as trustee or hold a beneficial interest, and any entity in which any of
4 the above persons hold a controlling interest ("Protected Persons").
5 Unlike the California Order and the Ninth Circuit Order, the order will
6 not apply to persons or entities other than the Protected Persons.
7 Although the pervasive and abusive nature of Peter's litigation abuses
8 frankly may warrant a broader injunction, defendants' request was
9 limited in scope, and Peter has not received notice that a broader order
10 might be entered.

11 The court will therefore enter an order restricting Peter from
12 filing any new adversary proceedings or contested matters against any of
13 the Protected Persons in bankruptcy courts nationwide, except: (1) any
14 adversary proceeding or contested matter against any of the Protected
15 Persons in which Peter is represented by legal counsel authorized to
16 practice in the district (including by *pro hac vice* admission); or (2)
17 any adversary proceeding or contested matter against any of the
18 Protected Persons that the chief bankruptcy judge in the relevant
19 district authorizes for filing.

20 This court concludes that it would be appropriate to enter a
21 similar order that applies to Peter's filings in federal district courts
22 nationwide. Although this court was unable to locate any case in which
23 a bankruptcy judge has made findings and recommendations to a district
24 court for the entry of a pre-filing order, there are cases in which a
25 magistrate judge issued findings and recommendations to the applicable

26 ¹⁵ David Alexander is Barbara's husband.

1 district court judge regarding such an order. See, e.g., Harry and
2 David v. Pathak, 2012 WL 1309181 (D. Or. Feb. 9, 2012) (magistrate judge
3 recommended that no pre-filing order be entered); Marks v. United
4 States, 2008 WL 803150 (W.D. Wash., Mar. 24, 2008) (district court
5 entered pre-filing order based on the findings and recommendation of
6 magistrate judge); Cello-Whitney v. Hoover, 769 F.Supp. 1155 (W.D. Wash.
7 1991) (magistrate judge recommended that a pre-filing order be entered
8 and set out proposed specific terms of such an order).

9 Therefore, based on my findings set out in this Memorandum Opinion,
10 this court recommends to the United States District Court for the
11 District of Oregon that it also enter a pre-filing order, similar in
12 scope to the order this court will enter, limiting Peter's ability to
13 file new lawsuits against any of the Protected Persons in any federal
14 district court nationwide.

15 CONCLUSION

16 For the reasons stated above, the court will enter judgment against
17 Peter in favor of Victor, Evye, Anthony, and Barbara on defendants'
18 counterclaim for wrongful use of civil proceedings and award damages as
19 set out above. The court will enter a judgment of dismissal of the
20 wrongful use of civil proceedings counterclaims of John Barlow,
21 Mariette, Kimberley, Nicole, and Austin. The court will prepare the
22 judgment.

23 Defendants' request that this court grant the Protected Persons
24 injunctive relief in bankruptcy courts nationwide will be granted. The
25 court will prepare the appropriate order as outlined above.

26 Finally, the court will transmit this Memorandum Opinion to the

1 district court as a Report and Recommendation that the Oregon District
2 Court enter a similar order applicable to district courts nationwide.

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5 NOTE: The procedure for filing objections to this Report and
6 Recommendation is found in Fed. R. Bankr. P. 9033.

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8 cc: Peter Szanto
9 Nicholas J. Henderson
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